IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.1009 OF 2002
IN
SUMMARY SUIT NO.3083 OF 2002

Shri.Praful Bhagawandas Desai ...Plaintiff

Vs.

Shri. Sameer Vilas Desai & Anr. ...Defendants

Mr.N.C.Patel, Adv. for the Plaintiff

Ms.M. Sadli Adv. i/b. D.P. Shah Adv. for Defendants

CORAM: D.G. DESHPANDE,J.
DATED: 13TH SEPTEMBER, 2004

P.C.

. This suit is filed on the basis of Memorandum of Understanding dated 4th February, 2000, copy of which is filed with the plaint. The Defendants have admitted their liability of Rs.1,91,000/- out of which Rs.65,000/- has been paid and Rs.1,26,000/- remains. The Defendant's contention now is that this Memorandum of Understanding is an acknowledgment of original debt advanced in 1995 and since the so called acknowledgment is beyond time, the suit is also barred by limitation. Second defence is that Memorandum of Understanding is obtained by coercion and pressure.

. Counsel for the Plaintiff contended that the Plaintiff filed Criminal Proceeding against the Defendant Nos.1 and 2 under Section 138 of the

Negotiable Instrument Act in respect of the cheques given towards the repayment of liability. That cause came to be dismissed and there after Defendant entered into Memorandum of Understanding. Even if in the Memorandum of Understanding there is reference to the earlier liability, the Memorandum of Understanding is a separate agreement in itself. Therefore, at this juncture the contentions of the Defendant that the suit is barred by limitation cannot be accepted. After the complaint was dismissed the Plaintiff did not file any appeal. The second contention about getting this document under force and pressure is not well founded. There is nothing produced on record to support this contention.

. In the above circumstances leave to Defendant by condition of Defendant depositing Rs.1,25,000/- before six weeks. Summons for Judgment is disposed of.

(D.G.DESHPANDE)

JUDGE